



41 CFR Part 102-3

[FMR Case 2022-01; Docket No. 2022-0015, Sequence No. 1]

RIN 3090-AK59

Federal Management Regulation; Federal Advisory Committee Management

AGENCY: Office of Governmentwide Policy (OGP), General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA proposes to amend the Federal Management Regulation (FMR) to update the regulations concerning Federal Advisory Committee Management. This rule proposes revisions that will implement legislative updates; help ensure that regulations concerning Federal Advisory Committee Management are user-friendly; clarify and update key roles; increase transparency, diversity, equity, access, accessibility, and inclusion throughout advisory committee processes and procedures; update the language regarding merger; and implement process improvements with respect to advisory committee charters and agency administrative guidelines.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before **[INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FMR Case 2022-01 to Regulations.gov at <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FMR Case 2022-01". Select the link "Comment Now" that corresponds with FMR Case 2022-01. Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FMR Case 2022-01" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite FMR Case 2022-01, in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Lorelei Kowalski, Director, Committee Management Secretariat, Office of Asset and Transportation Management, Office of Government-wide Policy, at 202-208-6035 or e-mail at lorelei.kowalski@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory

Secretariat Division at 202-501-4755 or *GSARegSec@gsa.gov*.

Please cite FMR Case 2022-01.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Changes

The Federal Advisory Committee Act (FACA or "the Act") as amended, 5 U.S.C. Chapter 10, (codified at 5 U.S.C. 1001 et seq.), governs the establishment, operation, and termination of advisory committees within the Executive Branch of the Federal Government. Advisory committees are a useful tool for "furnishing expert advice, ideas, and diverse opinions to the Federal Government," Sec. 2(a) (codified at 5 U.S.C. 1002(a)), and the Act helps to ensure that Congress and the public are kept informed regarding the purpose, membership, activities, and cost of advisory committees, Sec. 2(b)(5) (codified at 5 U.S.C. 1002(b)(5)).

GSA is responsible for administering the Act, including "prescribing administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, providing advice, assistance, and guidance to advisory committees to improve their performance." Sec. 7(c) (codified at 5 U.S.C. § 1006(c)); see also Executive Order 12024 (delegating to the Administrator of General Services almost all of "the functions vested in the President by the Federal Advisory Committee Act").

The Administrator of General Services has delegated all of GSA's FACA-related responsibilities to GSA's Committee Management Secretariat ("the Secretariat"). See 41 CFR 102-3.100. Over the past forty years, the Secretariat has been implementing the Act through regulations concerning Federal Advisory Committee Management currently published at 41 CFR part 102-3. See *Public Citizen v. DOJ*, 491 U.S. 440, 465 n.12 (1989).

As explained throughout this section, GSA is now proposing to amend Part 102-3 of the Federal Management Regulation to implement legislative updates; help ensure that regulations concerning Federal Advisory Committee Management are user-friendly; clarify and update key FACA roles; increase transparency, diversity, equity, access, accessibility, and inclusion throughout advisory committee processes and procedures; update the language regarding merger; and implement process improvements with respect to advisory committee charters and agency administrative guidelines.

A. Implementing Legislative Updates

GSA proposes to update 41 CFR 102-3.40 to reflect a legislative change that was made by the Intelligence Authorization Act for Fiscal Year 2010 (Pub. L. 111-259), which states that the Director of National Intelligence may determine that, for reasons related to national security,

FACA is not applicable to advisory committees of the Office of the Director of National Intelligence (ODNI).

B. Removing Unnecessary Language and Information

To make regulations concerning Federal Advisory Committee Management more user-friendly—and ultimately enhance the performance of advisory committees—GSA proposes to remove certain language and information from Part 102-3. See also Executive Order 14058 on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government (directing agency heads to identify opportunities, as appropriate and consistent with applicable law, to modify their regulations to enhance customer experience and service delivery outcomes).

First, GSA proposes to remove Appendices throughout Part 102-3 because that information—guidance in the form of answers to frequently asked questions—is better suited for GSA's Federal Advisory Committee Management website, where GSA can more easily "provide advice, assistance, and guidance to advisory committees to improve their performance." Sec. 7(c) (codified at 5 U.S.C. 1006(c)).

Second, GSA proposes removing unnecessary language throughout Part 102-3 because it either does not add meaningful clarification to the implementation of the Act, is not easily understandable, or is duplicative of language included elsewhere.

For example, 41 CFR 102-3.30(b) on termination currently provides requirements for terminating an advisory committee, which are essentially repeated in 41 CFR 102-3.55 on the duration of committees. GSA is also aware that the difference between "termination" and "duration" has been a source of confusion during the advisory committee chartering process. Accordingly, GSA proposes revising both of those sections in order to remove duplicative language and to help ensure that the Act's use of those terms is consistently applied throughout GSA's regulations.

Similarly, GSA proposes to remove certain language from 41 CFR 102-3.130 that is already captured in other regulations or policies governing the appointment, compensation, or reimbursement of advisory committee members, staff, experts, and consultants. For example, the Office of Personnel Management (OPM) establishes policy for compensating Federal employees and hiring experts and consultants, and GSA need not repeat those policies in 41 CFR 102-3.130.

Overall, these proposed amendments will improve the clarity of regulations concerning Federal Advisory Committee Management, which will in turn enhance the performance of advisory committees.

C. Updating Key Roles

Consistent with the agency's responsibility to "prescribe administrative guidelines and management

controls applicable to advisory committees," Sec. 7(c) (codified at 5 U.S.C. 1006(c)), GSA proposes clarifying the definitions and responsibilities of certain key roles.

First, GSA proposes adding two key roles to the definitions section at 41 CFR 102-3.25—the "Chairperson" and the "Group Federal Officer."

- The Act refers to a chair of each advisory committee, see Sec. 10 (codified at 5 U.S.C. 1009), but does not define the contours of that role. Accordingly, GSA proposes to define "chairperson" as "the advisory committee or subcommittee member who serves in this role on an advisory committee or subcommittee by statutory requirement, or by appointment or invitation by presidential authority or an agency's authority."

- GSA proposes defining "Group Federal Officer" as "an individual who assists the [Committee Management Officer] in overseeing and managing a portion of the agency's Federal advisory committee management program." GSA coined this term years ago to capture a key role that some agencies use to support their FACA programs, and GSA believes it is helpful to formally recognize what continues to be a key role for some agencies.

Second, GSA proposes clarifying the responsibilities of certain roles:

- GSA (41 CFR 102-3.100): Proposed revisions provide a more comprehensive description of actual

Secretariat activities, update terminology, and recognize a government-wide interagency group that has been in existence since GSA published the Final Rule in 2001, see Federal Advisory Committee Management, 66 FR 37727 (July 19, 2001) (hereinafter "2001 Final Rule").

- Agency Heads (41 CFR 102-3.105): Proposed revisions more clearly identify the role of the agency head with respect to advisory committee charters and members.

- Committee Management Officer (41 CFR 102-3.115): Proposed revisions help to clarify the full scope and importance of the Committee Management Officer, including acknowledgment of common actions implemented by Committee Management Officers across the executive branch in managing their agency's Federal advisory committee program.

- Designated Federal Officer (DFO) (41 CFR 102-3.120): Proposed revisions better reflect the central function of the DFO under the Act—including ensuring compliance with the Act, serving as a point of contact for members of the public, and maintaining appropriate record keeping and reporting of committee activities.

Overall, these proposed amendments will improve the clarity of FACA-related responsibilities, which will in turn enhance the performance of advisory committees.

D. Increasing Transparency, Diversity, Equity, Access, Accessibility, and Inclusion

The Act states that advisory committees must be "fairly balanced in terms of the points of view represented and the functions to be performed." Sec. 5(b)(2), (c) (codified at 5 U.S.C. 1004(b)(2), (c)). Further, the Act's "legislative history makes clear that the fairly balanced requirement was designed to ensure that persons or groups directly affected by the work of a particular advisory committee would have some representation on the committee." Nat'l Anti-Hunger Coal. v. Exec. Comm. of President's Priv. Sector Surv. on Cost Control, 711 F.2d 1071, 1074 n. 2 (D.C. Cir. 1983).

While the Act itself does not provide instructions on how agencies are to attain fairly balanced committee membership, the legislative history indicates that the Act, "[i]n the interest of economy and organization," places "substantial power in [the implementing agency] to establish guidelines for advisory committees and to direct the agencies' use of them." 118 Cong. Rec. 16302 (1972) (statement of Rep. Moss) (referring to responsibilities that initially belonged to the Office of Management and Budget, which were later transferred to GSA in Executive Order 12024); see also 118 Cong. Rec. 16305 (1972) (statement of Rep. Fascell) (referring to responsibilities that were eventually transferred to GSA and stating that the Act "is explicit and without any ambiguity as to the kind of authority [that the implementing agency] would have

in making the guidelines"); 118 Cong. Rec. 30280 (1972) (statement of Sen. Roth) (recognizing that the Act would "offer[] improved tools for the management of committees by [the implementing agency]").

Over the past forty years, GSA has issued regulatory requirements and subregulatory guidance on how to ensure fairly balanced committee membership. Since 1983, GSA's regulations have required agencies to consider a "cross-section" of "interested" persons and groups with demonstrated professional or personal qualifications or experience to contribute to the "functions" and tasks to be performed. See Federal Advisory Committee Management, 48 FR 19324 (Apr. 28, 1983). In response to comments, that language evolved over time, before settling in 1989 on the formulation that exists in the current regulatory text: that agencies must consider "a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee," which should "include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed" by the advisory committee. Federal Advisory Committee Management, 54 FR 41215 (Oct. 5, 1989). Further, in 2001, GSA responded to a commenter seeking further guidance on how to achieve fairly balanced committee membership by including an Appendix that encouraged agencies to consider several

factors, including (1) the advisory committee's mission; (2) the geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations; (3) the types of specific perspectives required, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors; (4) the need to obtain divergent points of view on the issues before the advisory committee; and (5) the relevance of State, local, or tribal governments to the development of the advisory committee's recommendations. See 2001 Final Rule, 66 Fed. Reg. 37727, 37740.

Consistent with the agency's responsibility to "prescribe administrative guidelines and management controls applicable to advisory committees, and . . . [to] provide advice, assistance, and guidance to advisory committees to improve their performance," Sec. 7(c) (codified at 5 U.S.C. 1006(c))—and in an effort to help committees to actually attain fairly balanced membership—GSA has long required agencies to submit "a description of the agency's plan to attain balanced membership," 48 FR 19324 (Apr. 28, 1983). More recently, in an effort to collect more substantive information regarding an agency's plan to attain a fairly balanced membership, GSA released guidance to the FACA community in 2011 on "Preparing Membership Balance Plans" (MBPs). See

https://www.gsa.gov/cdnstatic/MembershipBalancePlanGuidance-November_2011.pdf.

Now, GSA proposes updating the regulatory language pertaining to the MBP (specifically at 41 CFR 102-3.60) to reflect GSA's longstanding guidance. Furthermore, in response to feedback from agencies and consistent with recent Presidential Actions supporting diversity, equity, inclusion, and accessibility, GSA proposes clarifying the procedures for submitting a MBP that helps ensure fairly balanced committee membership. Under that proposal, an agency shall provide the Secretariat with a MBP that addresses how the agency will ensure representation of all points of view required for fairly balanced committee membership—including groups and entities potentially affected, those with relevant lived experience, and persons with demonstrated professional or personal qualifications—as well as how the agency intends to conduct broad outreach to ensure that the call for nominees reaches the targets and stakeholder groups likely to possess those points of view.

By requiring agencies to seek out individuals for potential membership that have relevant professional and/or lived experience with topics likely to come before the advisory committee, agencies can help to ensure that those insights and experiences inform and enhance the committee's work. See Syreeta Skelton-Wilson et al., "Methods and

Emerging Strategies to Engage People with Lived Experience,” Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services (Dec. 21, 2021), <https://aspe.hhs.gov/sites/default/files/documents/47f62cae96710d1fa13b0f590f2d1b03/lived-experience-brief.pdf>. For example, by engaging individuals with relevant lived experience, “[s]ome initiatives, especially those involving legislatively mandated advisory groups or research commissions, [have] reported benefits such as an improved ability to deliver responsive services, programming, training, and technical assistance.” Id. at 6. Overall, the proposed amendments will help to continue improving the quality of committee conclusions and recommendations—ultimately enhancing the performance of advisory committees.

Further, GSA proposes updating the rules and principles that apply to the management of advisory committees (specifically at 41 CFR 102-3.95 and 41 CFR 102-3.140), including (a) clarifying that adequate committee support includes access to adequate virtual meeting capabilities and access to communication modes that are more inclusive; (b) encouraging agencies to be as transparent, equitable, inclusive, and timely as possible when providing public access to committee activities and materials; and (c) fostering active engagement,

participation, and expression from all committee members and any member dissenting opinions, as applicable.

Overall, the proposed amendments will help improve public access to advisory committees and membership engagement, which will in turn enhance the performance of advisory committees.

Finally, GSA proposes improving public access to advisory committee meetings through amendments to 41 CFR 102-3.65, 102-3.150, and 102-3.165. The Act specifies that meeting notices shall be published in the Federal Register and states that GSA "shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of each meeting in advance." Sec. 10(a)(2) (codified at 5 U.S.C. 1009(a)(2)). These amendments accordingly seek to expand public notification beyond publication in the Federal Register by encouraging use of agency websites and other online forums. These amendments will also improve public access to advisory committees and thus will enhance the performance of those advisory committees.

E. Updating the Language Regarding Merger

The Act instructs the Administrator of General Services to conduct an annual "review of the activities and responsibilities of each advisory committee," in part "to determine . . . whether the committee should be merged with other advisory committees." Sec. 7(b) (codified at 5 U.S.C.

1006(b)). Historically, merger of advisory committees has been infrequent. More recently, however, merger has become a more routine occurrence during the consultation process. Accordingly, to appropriately account for that trend, GSA proposes adding the term "merge" throughout Part 102-3—namely, to sections that apply to actions taken by an agency in the establishment, reestablishment, renewal, operation, and termination of Federal advisory committees.

F. Implementing Process Improvements—Charters

The Act identifies certain information that must be included in the charter for each committee. See Sec. 9 (codified at 5 U.S.C. 1008). Over a decade ago—consistent with the Administrator's responsibility to "provide advice, assistance, and guidance to advisory committees to improve their performance," Sec. 7(c) (codified at 5 U.S.C. 1006(c))—GSA issued guidance on Preparing Federal Advisory Committee Charters, available at: https://www.gsa.gov/cdnstatic/Preparing_FAC_Charters_28F29-110211.pdf. In addition to setting forth the requirements included in Section 9 of the Act (codified at 5 U.S.C. 1008), the guidance also includes other information that enhances the transparency of advisory committee operation to the public, such as information on the authority, formation of subcommittees, and recordkeeping. GSA now proposes updating the charter section at 41 CFR 102-3.75 to reflect this current

guidance—ultimately with the goal of increasing transparency with respect to the operation of each advisory committee and enhancing the performance of advisory committees.

Further, GSA proposes revising the charter amendment process. The current regulatory process for amending charters (per the 2001 Final Rule) stipulates two separate processes for amendments—one that applies to minor changes, and the other that applies to major changes. Those processes, however, are identical except for a requirement to consult with the Secretariat as to any major changes. Although GSA's intent was to forgo the need for consultation with the Secretariat if the changes were truly minor, there has been confusion in the FACA community regarding what specifically constitutes a minor amendment. Further, this confusion has resulted in a number of agencies choosing to consult with the Secretariat on all charter amendments. Accordingly, to eliminate confusion, GSA proposes consolidating the charter amendment sections into a singular process, to appear at 41 CFR 102-3.80. In addition, consistent with GSA's priority of increasing transparency with respect to advisory committee activities (as explained above), GSA proposes requiring that agencies post notice of the amendment to the relevant advisory committee website (if one exists).

G. Implementing Process Improvements-Agency

Administrative Guidelines

The Act requires each agency head to “establish uniform administrative guidelines and management controls for advisory committees established by that agency.” Sec. 8(a) (codified at 5 U.S.C. 1007(a)). In recent years, the FACA community has inquired about appropriate content for those guidelines. In response, GSA now proposes revising 41 CFR 102-3.125 to clarify some of the operational components that agency administrative guidelines should reflect—such as specifying the content of committee bylaws and providing instructions on how to identify, calculate, and document advisory committee costs.

H. Severability

GSA proposes adding a new subpart on severability at 41 CFR 102-3.190, which states that all provisions included in Part 102-3 are separate and severable from one another.

Regulations concerning Federal Advisory Committee Management do a number of things—from outlining public notification requirements to explaining the role of an agency head. Overall, each constituent element in Part 102-3 operates independently to help ensure that standards and uniform procedures govern the establishment, operation, administration, and duration of advisory committees. See Sec. 2(b)(4) (codified at 5 U.S.C. 1002(b)(4)).

Accordingly, if any particular provision in Part 102-3 were to be stayed or invalidated by a reviewing court, the remaining provisions would continue to function effectively for advisory committees. For example, if 41 CFR 102-3.75 on charter requirements were invalidated, that would not make 41 CFR 102-3.155, which lists the requirements for facilitating an advisory committee meeting that is closed to the public, unworkable. Likewise, if 41 CFR 102-3.60(b)(3) on attaining fairly balanced membership were invalidated, that would not prevent an agency from relying on the definitions section at 41 CFR 102-3.25 to understand what "committee staff" means.

Further, any cross-references that appear throughout Part 102-3 are duplicative and are intended only to make the regulations more user-friendly. Invalidation of a particular provision that is cross-referenced elsewhere will not materially alter the provision that contains the cross-reference.

In summary, removal of any particular provision from Part 102-3 would not render the entire regulatory scheme unworkable. Thus, GSA considers each of the provisions in Part 102-3 to be separate and severable from one another. In the event of a stay or invalidation of any particular provision, it is GSA's intention that the remaining provisions shall continue in effect.

II. Expected Impact of this Proposed Rule

This rule will have a cost impact on the Federal Government; however, it will not impact the private sector or state, local, or Tribal Governments, as it relates solely to agency administration and management. GSA has already incorporated a number of the changes into the consultation process that occurs between the agencies and GSA, the government-wide training for agencies and personnel involved with committee work, and routine interactions regarding agency committee management programs.

III. Expected costs and benefits

GSA conducted an economic analysis of the proposed changes and determined that during the first and subsequent years after publication of the rule, there are compliance costs associated with the new rule. GSA estimates the overall total additional undiscounted cost of this proposed rule to be \$7,007,064 over a ten-year period. See Section VI.A (providing a full breakdown of compliance costs). There are numerous benefits described throughout Section I—including implementing legislative updates; helping to ensure that regulations concerning Federal Advisory Committee Management are user-friendly; clarifying and updating key FACA roles; increasing transparency, diversity, equity, access, accessibility, and inclusion throughout advisory committee processes and procedures; updating language regarding merger; and implementing

process improvements with respect to advisory committee charters and agency administrative guidelines.

IV. Executive Orders 12866, 13563, and 14094

Executive Order (E.O.) 12866, 13463, and 14094 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. E.O. 14094 supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. The Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) has designated this rule as a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866.

V. Regulatory Flexibility Act

GSA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This proposed rule applies only to Federal agencies and employees.

A. Government Costs

GSA has determined, based on an economic model, that there are compliance costs associated with the Proposed Rule. The following section is a list of activities related to regulatory familiarization and compliance that GSA anticipates will occur. Compliance activities would take place in the FACA community and would consist of amending charters, revising guidelines, training, and outreach for diversity, equity, inclusion, access, and accessibility. These assumptions were generated based on internal GSA expertise. GSA estimates this cost by multiplying the time required to conduct the compliance activity by the estimated compensation. GSA calculates the estimated hourly compensation using the U.S. Office of Personnel Management's 2023 General Schedule (GS) Rest of United States Locality Pay Table and the full fringe benefit cost factor.^{1 2 3}

1. Amending Charters

GSA estimates it will take 25 government employees on average with a GS-14 step five average hourly rate of \$86.12/hour, three hours each in years 1 to 10 to amend charters with updated information from this rule.

¹ U.S. Office of Personnel Management General Schedule

² OMB Memo M-08-13, dated March 11, 2008

³ Fact Sheet: Computing Hourly Rates of Pay Using the 2087-Hour Divisor

Therefore, GSA estimates the total estimated cost for this part of the rule per year to be \$6,459 (= [25 employees] x [\$86.12/hour] x [3 hours]).

2. Revising Guidelines

GSA estimates it will take 57 government employees, Committee Management Officers with a GS-15 step five average hourly rate of \$101.30/hour, four hours each in year 1 to update guidelines with updated information from this rule. Therefore, GSA estimates the total estimated cost for this part of the rule to be \$23,096 (= [57 employees] x [\$101.30/hour] x [4 hours]).

GSA estimates it will take 987 government employees, Designated Federal Officers with a GS-12 step five average hourly rate of \$61.29/hour, 0.5 hours each in year 1 to update guidelines with updated information from this rule. Therefore, GSA estimates the total estimated cost for this part of the rule to be \$30,245 (= [987 employees] x [\$61.29/hour] x [0.5 hours]).

3. Training

GSA estimates it will take 57 government employees, Committee Management Officers with a GS-15 step five average hourly rate of \$101.30/hour, 0.5 hours each in year

1 to deliver training related to changes with this rule. Therefore, GSA estimates the total estimated cost for this part of the rule to be \$2,887 (= [57 employees] x [\$101.30/hour] x [0.5 hours]).

GSA estimates it will take 1,552 government Full-Time Equivalents (FTEs) with a GS-12 step five average hourly rate of \$61.29/hour 0.5 hours each in year 1 to receive training related to changes with this rule. Therefore, GSA estimates the total estimated cost for this part of the rule to be \$47,558 (= [1,552 FTEs] x [\$61.29/hour] x [0.5 hours]).

4. Outreach for Diversity, Equity, Inclusion, Access, and Accessibility

GSA estimates it will take government employees with a GS-13 step five average hourly rate of \$72.88/hour four hours per membership slot, in years 1 to 10 to conduct additional outreach in identifying 1,050 new members that may be able to participate in new advisory committees—ultimately to help ensure that committee membership is fairly balanced. Therefore, GSA estimates the total estimated cost for this part of the rule per year to be \$306,081 (= [1,050 membership slots] x [\$72.88/hour per government employee] x [4 hours]).

GSA estimates it will take government employees with a GS-13 step five average hourly rate of \$72.88/hour) 0.5 hours per membership slot in year 1, to conduct additional outreach in identifying 31,831 new members that may be able to participate in U.S. Department of Health and Human Services grant reviews—ultimately to help ensure that committee membership is fairly balanced. Therefore, GSA estimates the total estimated cost for this part of the rule to be \$1,163,509 (= [31,831 membership slots] x [\$72.88/hour per government employee] x [0.5 hours]).

GSA estimates it will take government employees with a GS-13 step five average hourly rate of \$72.88/hour) one hour per membership slot in years 1 and 2 to conduct additional outreach in identifying 17,937 new members that may be able to participate in non-grant review Federal advisory committees—ultimately to help ensure that committee membership is fairly balanced. Therefore, GSA estimates the total estimated cost for this part of the rule per year to be \$1,307,185 (= [17,937membership slots] x [\$72.88/hour] x [1 hour]).

5. Total Government Costs

GSA estimates the total government costs to be \$7,007,064 for years 1 to 10. A breakdown of the total

estimated government costs by year is provided in the table below.

Year	Costs
1	\$2,887,020
2	\$1,619,725
3	\$312,540
4	\$312,540
5	\$312,540
6	\$312,540
7	\$312,540
8	\$312,540
9	\$312,540
10	\$312,540
Total	\$7,007,064

B. Overall Total Additional Costs

The overall total additional undiscounted cost of this final rule is estimated to be \$7,007,064 over a ten-year period. A summary of the estimated costs calculated for a ten-year period at a 3- and 7-percent discount rate is provided in the table below. GSA did not identify any cost savings based on the impact of the rule.

Summary			Total Costs
Present Value (3 percent)			\$6,397,671
Annualized Costs (3 percent)			\$750,002
Present Value (7 percent)			\$5,742,952
Annualized Costs (7 percent)			\$817,667

C. Analysis of Alternatives

The preferred alternative is the process laid out in the analysis above. However, GSA has analyzed one alternative to the preferred process.

As an alternative, GSA could decide not to update regulations concerning Federal Advisory Committee Management; however, that alternative would leave outdated content in the regulations, which would continue to cause confusion, impede accessibility and transparency by excluding the expansion of virtual formats, and waste government time and resources by forcing agencies to seek clarification on sections that contain unclear and unnecessary language. In light of those concerns, GSA rejects the alternative.

VI. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 41 CFR Part 102-3

Advisory committees; Governmental property management.

Krystal J. Brumfield,
Associate Administrator,
Office of Government-wide Policy.

Therefore, GSA proposes to amend 41 CFR part 102-3 as set forth below:

PART 102-3—FEDERAL ADVISORY COMMITTEE MANAGEMENT

1. The authority citation for part 102-3 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 7, 5 U.S.C. Chapter 10; and E.O. 12024, 3 CFR, 1977 Comp., p. 158.

2. Amend § 102-3.5 by revising the first sentence to read as follows:

§ 102-3.5 What does this subpart cover and how does it apply?

This subpart provides the policy framework and establishes minimum requirements that must be used by agency heads and Federal officers in applying the Federal Advisory Committee Act, as amended (FACA or "the Act"), 5 U.S.C., Chapter 10, to advisory committees they establish and operate. * * *

3. Revise § 102-3.10 to read as follows:

§ 102-3.10 What is the purpose of the Federal Advisory Committee Act?

FACA governs the establishment, operation, administration, and termination of advisory committees within the executive branch of the Federal Government. The Act defines what constitutes a Federal advisory committee and provides general procedures for the executive branch to

follow for the operation of these advisory committees. In addition, the Act is designed to assure that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, recommendations, outcomes, and cost of advisory committees through reporting requirements. These requirements form the basis for implementing the Act at both the agency and government-wide levels.

§§ 102-3.15 and 102-3.20 [Removed and Reserved]

4. Remove and reserve §§ 102-3.15 and 102-3.20.

5. Amend § 102-3.25 by—

- a. Revising the definitions for “Act”, “Advisory committee” and “Agency”;
- b. Adding, in alphabetical order, the definitions for “Agency Head” and “Chairperson”;
- c. Revising the definitions for “Committee Management Officer”, “Committee Management Secretariat”, “Committee Meeting”, “Committee member” and “Committee staff”, and “Designated Federal Officer”;
- d. Adding, in alphabetical order, the definition for “Group Federal Officer (GFO)”;
- e. Revising the definitions for “Independent Presidential advisory committee”, “Non-discretionary advisory committee”, “Subcommittee”, and “Utilized”.

The additions and revisions read as follows:

§ 102-3.25 What definitions apply to this part?

* * * * *

Act means the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. Chapter 10.

* * * * *

Advisory committee means any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining the group's advice or recommendations for the President or on issues or policies within the scope of agency responsibilities (codified at 5 U.S.C. 1001). Advisory committees are subject to the Act unless specifically exempted by the Act, or by other statutes, or not covered by this Part.

Agency has the same meaning as in 5 U.S.C. 551(1).

Agency Head means the head of an executive branch agency, department, or commission, or their designated delegate.

Chairperson means the advisory committee or subcommittee member who serves in this role on an advisory committee or subcommittee by statutory requirement, or by appointment or invitation by Presidential authority or an agency's authority.

Committee Management Officer (CMO) means the individual designated by the agency head to implement the provisions of section 8(b) of the Act (codified at 5 U.S.C.

1007(b)) and any delegated responsibilities of the agency head under the Act.

Committee Management Secretariat (Secretariat) means the organization established pursuant to section 7(a) of the Act (codified at 5 U.S.C. 1006(a)), which is responsible for all matters relating to advisory committees and carries out the responsibilities of the Administrator under the Act and E.O. 12024 (3 CFR, 1977 Comp., p. 158).

Committee meeting means any gathering of advisory committee members (whether in person or electronically, such as using telecommunications or through a virtual platform), held with the approval of an agency, and with a Designated Federal Officer in attendance, for the purpose of deliberating on the matters upon which the advisory committee provides advice or recommendations.

Committee member means an individual who serves by appointment or invitation by the appointing authority on an advisory committee or subcommittee.

Committee staff means any Federal employee, private individual, or other party (whether under contract or not) who is not a committee member, and who serves in a support capacity to an advisory committee or subcommittee. Committee staff serve in coordination with the Designated Federal Officer.

Designated Federal Officer (DFO) means an individual designated by the agency head, for each advisory committee

for which the agency head is responsible, to implement the provisions of sections 10(e) and (f) of the Act (codified at 5 U.S.C. 1009(e) and (f)) and any advisory committee procedures of the agency under the control and supervision of the CMO.

* * * * *

Group Federal Officer (GFO) means an individual who assists the CMO in overseeing and managing a portion of the agency's Federal advisory committee management program.

Independent Presidential advisory committee means any Presidential advisory committee not assigned by the Congress, or by the President or the President's delegate, to an agency for administrative and other support.

Non-discretionary advisory committee means any advisory committee either required by statute or by Presidential directive. A non-discretionary advisory committee required by statute generally is identified specifically in a statute by name, purpose, or function(s), and its establishment or termination is beyond the legal discretion of an agency head.

* * * * *

Subcommittee means the group that reports to an advisory committee, and not directly to a Federal officer or agency, whether or not its members are drawn in whole or in part from the parent advisory committee. However, if a subcommittee makes advice or recommendations directly to a

Federal officer or agency, it is no longer functioning as a subcommittee, and must: file a charter following the requirements of subpart § 102-3.70, that includes the information required in § 102-3.75; comply with all of the requirements of this part; and will be counted as a chartered advisory committee at an agency.

Utilized by means a committee that is one over which the President or a Federal officer or agency exercises actual management or control of its operation, whether or not it was established by the Federal Government.

6. Amend § 102-3.30 by revising the introductory text and paragraphs (a) through (d) to read as follows:

§ 102-3.30 What policies govern the use of advisory committees?

These are the policies to be followed by Federal departments and agencies in establishing and operating advisory committees consistent with the Act:

(a) *Determination of need in the public interest.* A discretionary advisory committee may be established only when it is essential to the conduct of agency business and when the information to be obtained is not already available through another advisory committee or source within the Federal Government.

(b) *Termination.* Advisory committees terminate pursuant to § 102-3.55.

(c) *Fairly balanced membership.* An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed (as explained further in § 102-3.60).

(d) *Open meetings.* Advisory committee meetings must be open to the public except when a meeting is closed or partially closed in accordance with the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c).

(1) *Compliance with section 504 of the Rehabilitation Act of 1973, as amended.* With the support of the sponsoring Federal department or agency, the advisory committee must provide reasonable modifications for individuals with disabilities when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the program or activity. The advisory committee must also take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others, including by furnishing appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the advisory committee. Examples of auxiliary aids and services include qualified interpreters and

information in alternate formats, such as braille or large print. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. An advisory committee may not charge for the provision of auxiliary aids and services. An advisory committee is not required to provide an aid or service if it can demonstrate that providing that aid or service would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. See 29 U.S.C. 794. Advisory committees should consider how to ensure that advisory committee members and members of the public are made aware of available auxiliary aides and services, as well as the option to request reasonable modifications in advance of meetings, and should identify a point of contact to receive and respond to requests for reasonable modifications.

(2) *Ensuring language access and provision of language assistance services.* With the support of the sponsoring Federal department or agency, the advisory committee must ensure equal participation by individuals with limited English proficiency. This may include conducting outreach and providing notifications in the language(s) used by the affected communities and potential or actual advisory committee members, as well as providing

language assistance services, including electronic and printed written translated documents and oral interpretation services free of charge and in a timely manner, when such services are necessary to provide meaningful access to a limited English proficient individual, consistent with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and E.O. 13166: Improving Access to Services for Persons With Limited English Proficiency (August 11, 2000), 3 CFR, 2000 Comp., p. 289.

* * * * *

7. Revise § 102-3.35 to read as follows:

§ 102-3.35 What policies govern the use of subcommittees?

(a) In general, the requirements of the Act and the policies of this Federal Advisory Committee Management part do not apply to subcommittees of advisory committees that report to a parent advisory committee and not directly to a Federal officer or agency. However, this section does not preclude an agency from applying any provision of the Act and this part to any subcommittee of an advisory committee.

(b) If a subcommittee reports directly to a Federal officer or agency, it is no longer functioning as a subcommittee. In that case, the subcommittee must be chartered as a new advisory committee, must comply with all of the requirements of this part, and will be counted as a chartered advisory committee at an agency.

(c) Unless required by statute or Presidential directive, the creation and operation of subcommittees must be approved by the agency establishing the parent advisory committee in coordination with the DFO.

8. Revise § 102-3.40 to read as follows:

§ 102-3.40 What types of committees or groups are not covered by the Act and this part?

In addition to the committees created by the National Academy of Sciences, Engineering, and Medicine and the National Academy of Public Administration (except as covered by subpart E of this part), the Central Intelligence Agency, and the Federal Reserve, the following are examples of committees or groups that are not covered by the Act or this Federal Advisory Committee Management part:

(a) Any advisory committee established or utilized by the Office of the Director of National Intelligence, if the Director of National Intelligence determines that for reasons of national security such advisory committee cannot comply with the requirements of the Act;

(b) Committees specifically exempted by statute;

(c) Committees created by non-Federal entities and not actually managed or controlled by the executive branch;

(d) Groups assembled where attendees provide individual advice to a Federal official(s);

(e) Groups assembled to exchange facts or information with a Federal official(s);

(f) Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local, and Tribal Governments (or their designated employees with authority to act on their behalf), acting in their official capacities. The purpose of such a committee must be solely to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), and OMB Memorandum M-95-20, dated September 21, 1995, available on the Committee Management Secretariat website);

(g) Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government;

(h) Local civic groups whose primary function is that of rendering a public service with respect to a Federal program;

(i) Groups established to advise State or local officials;

(j) Any committee established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy. A committee designated operational may be covered by the Act if it becomes primarily advisory in nature; and

(k) Any committee established, created, managed, and staffed by the government of a foreign country; or any committee created, managed, and staffed by an executive branch agency to advise or make recommendations to a government official, government group, or government agency of a foreign country.

Appendix A to Subpart A of Part 102-3 [Removed]

9. Remove appendix A to subpart A of part 102-3.

10. Revise the heading of subpart B to read as follows:

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, Merged, and Terminated?

11. Revise § 102-3.45 to read as follows:

§ 102-3.45 What does this subpart cover and how does it apply?.

Requirements for establishing and terminating advisory committees vary depending on the establishing entity and the source of authority for the advisory committee. This subpart covers the procedures associated with the

establishment, renewal, reestablishment, merger, and termination of advisory committees. These procedures include, but are not limited to, consulting with the Secretariat, preparing and filing an advisory committee charter, publishing notice in the Federal Register, and amending an advisory committee charter.

12. Amend § 102-3.50 by revising paragraphs (a) through (d) to read as follows:

§ 102-3.50 What are the authorities for establishing advisory committees?

* * * * *

(a) *Required by statute.* By law where Congress establishes an advisory committee, or specifically directs the President or an agency to establish it (non-discretionary);

(b) *Presidential authority.* By E.O. of the President or other Presidential directive (non-discretionary);

(c) *Authorized by statute.* By law where Congress authorizes, but does not direct the President or an agency to establish it (discretionary); or

(d) *Agency authority.* By an agency under general authority in title 5 of the United States Code or under other agency-authorizing statutes (discretionary).

13. Amend § 102-3.55 by revising paragraphs (a) (1) and (4) to read as follows:

§102-3.55 What rules apply to the duration of an advisory committee?

(a) * * *

(1) The statutory authority used to establish the advisory committee provides a different duration or termination, either stated in or implied by operation of the statute;

* * *

(4) The President or agency head renews the advisory committee not later than two years after its date of establishment, renewal, or reestablishment in accordance with § 102-3.60. If the President or an agency needs an advisory committee that was terminated or an advisory committee terminated because it was not renewed in a timely manner, it can be reestablished in accordance with § 102-3.60.

* * * * *

14. Revise § 102-3.60 to read as follows:

§ 102-3.60 What procedures are required to establish, renew, reestablish, or merge a discretionary advisory committee?

(a) *Consultation with the Secretariat.* The agency head must first consult with the Secretariat. As part of this consultation, agency heads should provide the Secretariat with a full understanding of the background and

purpose behind the advisory committee, and the Secretariat should share its knowledge and experience with the agency.

(b) *Include required information in the consultation with the Secretariat.* Consultations covering the establishment, renewal, reestablishment, or merger of advisory committees must, as a minimum, contain the following information:

(1) *Explanation of need.* An explanation stating why the advisory committee is essential to the conduct of agency business and in the public interest or why it is necessary to merge one or more advisory committees;

(2) *Lack of duplication of resources.* An explanation stating why the advisory committee's functions cannot be performed by the agency, another existing committee, or other means such as a public hearing or other methods of public engagement; and

(3) *Fairly balanced membership.* A description of the agency's plan to attain fairly balanced membership, as appropriate based on the nature and functions of the advisory committee, as documented through the agency's Membership Balance Plan (MBP).

(i) *Points of view required.* During the formation of the advisory committee membership and as membership vacancies occur, agencies should ensure that they fully consider and understand the potential implications or anticipated impacts of the advisory

committee's potential recommendations. This includes consideration of the groups and entities potentially include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed by the committee. The MBP shall describe the agency's conclusions regarding the points of view that would promote fairly balanced committee membership.

(ii) *Outreach.* Having identified the points of view that would promote a fairly balanced advisory committee membership, agencies should conduct broad outreach to ensure that the call for nominees reaches the targets and stakeholder groups likely to possess those points of view. Agencies should further ensure outreach to racially, ethnically, culturally, economically, and otherwise diverse groups, as appropriate to the nature and functions of the advisory committee. The MBP shall describe the agency's intended outreach efforts to accomplish these goals.

(iii) *Selection.* In the selection of members for the advisory committee and as membership vacancies occur, agencies shall ensure representation of persons with the points of view identified pursuant to this section that would promote a fairly balanced advisory committee membership. The MBP shall describe the agency's intended selection criteria and approach.

15. Revise § 102-3.65 to read as follows:

§ 102-3.65 What are the public notification requirements for discretionary advisory committees?

A notice to the public in the Federal Register is required when a discretionary advisory committee is established, renewed, or reestablished, or a new committee is established as the result of a merger of existing committees. The notices should be written in plain language and should not assume that the public has background knowledge or familiarity with an agency or the advisory committee. The agency is also strongly encouraged to make the notice available electronically in the languages represented by the affected communities on the agency's advisory committee website, if one exists, as well as use additional notification methods (such as an agency's social media accounts) to reach advisory committee stakeholders (such as professional trade or membership groups, civic groups, community-based organizations, ethnic media, representatives of affected stakeholder groups, and colleges and universities). Electronic notices must meet the requirements of Title VI and E.O. 13166, as well as obligations under section 508 of the Rehabilitation Act.

(a) *Procedure.* Upon receiving notice from the Secretariat that its review is complete in accordance with § 102-3.60(a), the agency must publish a notice in the Federal Register announcing that the advisory committee is

being established (including due to a merger), renewed, or reestablished. When establishing a new advisory committee, the notice also must describe the nature and purpose of the advisory committee and affirm that the advisory committee is necessary and in the public interest.

(b) *Time required for notices.* Notices of advisory committee establishment (including due to a merger) and reestablishment must appear at least 15 calendar days before the charter is filed, except that the Secretariat may approve less than 15 calendar days when requested by the agency in exceptional circumstances (such as a national emergency or natural disaster). This requirement for advance notice does not apply to advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

16. Amend § 102-3.70 by revising the introductory text, the introductory text of paragraph (a), and paragraphs (a)(3), (b), and (c) to read as follows:

§ 102-3.70 What are the charter filing requirements?

No advisory committee may meet or take any action until a charter has been filed by the CMO or by another agency official designated by the agency head.

(a) *Requirement for discretionary advisory committees.* To amend a charter, or establish (including due to a merger), renew, or reestablish a discretionary advisory committee, a charter must be filed with:

* * *

(3) The Library of Congress; and

* * *

(b) *Requirement for non-discretionary advisory committees.* Charter filing requirements for non-discretionary advisory committees are the same as those in paragraph (a) of this section, except that the date of establishment, renewal, or reestablishment for a Presidential advisory committee is the date the charter is filed with the Secretariat.

(c) *Requirement for subcommittees that report directly to the Government.* Subcommittees that report directly to a Federal officer or agency must comply with this subpart and be chartered as a new advisory committee as they are no longer functioning as a subcommittee.

17. Revise § 102-3.75 to read as follows:

§ 102-3.75 What information must be included in the charter of an advisory committee?

Purpose and contents of an advisory committee charter.

An advisory committee charter is intended to provide a description of an advisory committee's mission, goals, and objectives. The charter must contain the following information:

(a) The advisory committee's official designation (official name);

(b) The legal authority that permits the advisory committee to be established;

(c) The objectives and the scope of the advisory committee's activities;

(d) A description of the duties for which the advisory committee is responsible and specification of the authority for any non-advisory functions;

(e) The agency or Federal officer to whom the advisory committee submits its recommendations;

(f) The agency responsible for providing the necessary support to the advisory committee, including the name of the President's delegate, agency, or organization responsible for fulfilling the reporting requirements of section 6(b) of the Act (codified at 5 U.S.C. 1005(b)), if appropriate;

(g) The estimated annual costs to operate the advisory committee in dollars and person years (full time equivalents or FTE);

(h) The role of the DFO;

(i) The estimated number and frequency of the advisory committee's meetings;

(j) The period of time necessary to carry out the advisory committee's purpose(s);

(k) The planned termination date, if less than two years from the date of establishment of the advisory committee;

(l) The estimated number of advisory committee members, the expertise or experience required, and the anticipated advisory committee member designations;

(m) Whether subcommittees may be created, by whom, and how they operate under the chartered advisory committee;

(n) The relevant recordkeeping disposition schedule(s); and

(o) The date the charter is filed in accordance with § 102-3.70.

18. Revise § 102-3.80 to read as follows:

§ 102-3.80 How are charter amendments accomplished?

Responsibility and limitation. The agency head is responsible for amending the charter of an advisory committee. Amending any existing advisory committee charter does not constitute renewal of the advisory committee under § 102-3.60. The procedures for making changes and filing amended charters will depend upon the authority basis for the advisory committee, as stated below:

(a) *Non-discretionary advisory committees.* The agency head must ensure that any changes made to current charters are consistent with the relevant authority. When Congress by law, or the President by Presidential directive (e.g., E.O.), changes the authorizing language that has been the basis for establishing an advisory committee, the

agency head or the chairperson of an independent Presidential advisory committee must amend those sections of the current charter affected by the new statute or Presidential directive (e.g., E.O.), and file the amended charter as specified in § 102-3.70, and notify the public as specified in paragraph (c) of this section.

(b) *Discretionary advisory committees.* The charter of a discretionary advisory committee must be amended when an agency head determines that provisions of a filed charter are inaccurate, specific provisions have changed or become obsolete with the passing of time, or advisory committees need to be merged. Amendments could also include changing the name of the advisory committee, advisory committee authority, number of members, estimated number or frequency of meetings, objectives and scope, duties, and estimated costs. The agency must amend the charter language as necessary and the agency must:

(1) First consult with the Secretariat and explain the purpose of the changes and why they are necessary. The Secretariat will notify the agency when the consultation process is complete.

(2) Upon receiving notice from the Secretariat that the consultation is complete, file the amended charter as specified in § 102-3.70, and notify the public as specified in paragraph (c) of this section.

(c) *Public notification of charter amendments.*

Agencies must post an announcement and a copy of the charter amendment on the advisory committee website. If an advisory committee website is not available, the agency must publish a notice of amendment in the Federal Register. Federal Register notice publishing and website posting of charter amendments may be performed concurrently with the filing of the charter. The publishing requirement in the Federal Register does not apply to a non-discretionary advisory committee if the amendment was the result of a legislative change or Presidential directive.

§ 102-3.85 [Removed and Reserved]

19. Remove and reserve § 102-3.85.

Appendix A to Subpart B of Part 102-3 [Removed]

20. Remove appendix A to subpart B of part 102-3.

21. Revise § 102-3.90 to read as follows:

§ 102-3.90 What does this subpart cover and how does it apply?

This subpart outlines specific responsibilities and functions to be carried out by the U.S. General Services Administration (GSA), the agency head, the CMO, and the DFO under the Act.

22. Revise § 102-3.95 to read as follows:

§ 102-3.95 What principles apply to the management of advisory committees?

Agencies are encouraged to apply the following principles to the management of their advisory committees:

(a) *Provide adequate support and access.* Before establishing an advisory committee, agencies should identify requirements and ensure that adequate resources are available to support anticipated activities. Considerations related to support could include work and meeting space, necessary technology, supplies and equipment (e.g., adequate virtual meeting capabilities), Federal staff support, access to key decisionmakers, and member access to meetings (e.g., travel reimbursement). These considerations should also include support for access to communication modes that are inclusive of individuals with limited English proficiency or individuals with disabilities (e.g., adequate virtual meeting capabilities). These considerations should also include whether there are physical barriers to attending in-person meetings.

(b) *Practice openness.* Agencies should seek to be as transparent, equitable, inclusive, and timely as possible when providing public access to advisory committee activities and materials. Agencies should minimize, to the extent possible, closing or partially closing meetings, and are encouraged where appropriate to open subcommittee meetings to the public. Agencies should also create public facing websites at both the agency and advisory committee level to help the public understand an agency's advisory

committee program, and use additional notification methods, as appropriate, to reach advisory committee stakeholders, pursuant to section 10 of the Act (codified at 5 U.S.C. 1009). Such websites must be in compliance with E.O. 13166, section 508 of the Rehabilitation Act, and the 21st Century Integrated Digital Experience Act (IDEA). Section 3(e) of 21st Century IDEA requires any public Federal agency website created after December 2018 to be in compliance with the website standards of the Technology Transformation Services of the General Services Administration [GSA]. IDEA, Pub. L. 115-336, 132 Stat. 5025;.

(c) *Promote diversity and inclusivity.* Once the Federal advisory committee is formed, committee chairs and DFOs should foster a culture of diversity and inclusion by encouraging engagement, participation, and expression from all committee members and any members with dissenting opinions, as applicable.

(d) *Seek feedback.* Agencies should continually seek feedback from advisory committee members and the public regarding the advisory committee's activities. At regular intervals, agencies should communicate to the members how their advice has affected agency programs and decision making and make this information available to the public.

23. Revise § 102-3.100 to read as follows:

§ 102-3.100 What are the responsibilities and functions of GSA?

(a) The responsibilities of the Administrator under section 7 of the Act (codified at 5 U.S.C. 1006) have been delegated by the Administrator to the Committee Management Secretariat within GSA's Office of Government-wide Policy.

(b) The Secretariat carries out its responsibilities by:

(1) Engaging in consultations with agencies on the establishment, re-establishment, renewal, merger, and termination of discretionary advisory committees;

(2) Prescribing guidance applicable to advisory committees;

(3) Assisting other agencies in implementing and interpreting the Act;

(4) Conducting an annual comprehensive review of Government-wide advisory committee accomplishments, costs, benefits, and other indicators to measure performance;

(5) Developing and providing Government-wide training regarding the Act and related statutes and principles;

(6) Supporting the Interagency Committee on Federal Advisory Committee Management and FACA Attorney Council to improve compliance with the Act;

(7) Designing and maintaining a FACA database to facilitate data collection, reporting, and use of information required by the Act;

(8) Preparing regulations on Federal advisory committees;

(9) Identifying performance measures that may be used to evaluate advisory committee accomplishments; and

(10) Providing recommendations for transmittal by the Administrator to Congress and the President regarding proposals to improve accomplishment of the objectives of the Act.

24. Amend § 102-3.105 by—

a. Revising the introductory text and paragraphs (a), (b) and (c);

b. Redesignating paragraphs (d) through (j) as paragraphs (f) through (l);

c. Adding new paragraphs (d) and (e);

d. Revising the newly designated paragraphs (f), (j), (k), and (l).

The revisions and additions read as follows:

§ 102-3.105 What are the responsibilities of an agency head?

When a committee is utilized by or established by an agency, the agency head must:

(a) Comply with the Act, this part, and other applicable laws and regulations;

(b) Issue administrative guidelines and management controls providing the details that advisory committee staff need to implement during the creation, operation, and termination of their Federal advisory committees;

(c) Designate a CMO;

(d) Designate a DFO for each advisory committee and its subcommittees;

(e) Approve the advisory committee charters for establishments, renewals, re-establishments, or mergers;

(f) Provide a written determination stating the reasons for closing any advisory committee meeting to the public, in whole or in part, in accordance with the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c);

* * * * *

(j) Assure that the interests and affiliations of committee members are reviewed for conformance with applicable conflict of interest statutes, regulations issued by the U.S. Office of Government Ethics including any supplemental agency requirements, and other Federal ethics rules;

(k) Appoint or invite individuals to serve on committees, unless otherwise provided for by a specific statute or Presidential directive; and

(l) Provide the opportunity for reasonable participation, including accessibility considerations, by

the public in advisory committee activities, subject to § 102-3.140 and the agency's guidelines.

25. Amend § 102-3.110 by revising paragraphs (a) and (b) to read as follows:

§ 102-3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?

* * * * *

(a) Comply with the Act, this part, and other applicable laws and regulations;

(b) Consult with the Secretariat concerning the designation of a CMO and DFO; and

* * * * *

26. Amend § 102-3.115 by—

a. Revising section heading and introductory text;

b. Removing from paragraph (b) “§ 102-3.175(b)” and adding “§ 102-3.175(b)” in its place; and

c. Removing from paragraph (d) “§ 102-3.105” and adding “§ 102-3.105(f)” in its place.

The revisions read as follows:

§ 102-3.115 What are the responsibilities and functions of an agency CMO?

In addition to implementing the provisions of section 8(b) of the Act (codified at 5 U.S.C. 1007(b)), the CMO will carry out all responsibilities delegated by the agency head and manage the agency FACA program. Management includes consulting with the Secretariat on Federal

advisory committees, as delegated by the agency head; tracking charter establishments, renewals, re-establishments, mergers, amendments, and terminations; coordinating the agency Annual Comprehensive Review within their agency and with the Secretariat; providing training for agency staff supporting the FACA program; working with GFOs, as appropriate, and DFOs; and attending GSA government-wide FACA training and Interagency Committee on Federal Advisory Committee Management meetings. The CMO should create and maintain a public facing CMO website to further the public's understanding of the agency's FACA program. The CMO also should ensure that sections 10(b), 12(a), and 13 of the Act (codified at 5 U.S.C. 1009(b), 1011(a), and 1012, respectively) are implemented by the agency to provide for appropriate recordkeeping. Records to be kept by the CMO include, but are not limited to-

* * * * *

27. Revise § 102-3.120 to read as follows:

§ 102-3.120 What are the responsibilities and functions of a DFO?

(a) The agency head or, in the case of an independent Presidential advisory committee, the Secretariat, must designate a Federal officer or employee who must be either full-time or permanent part-time, to be the DFO for each advisory committee and its subcommittees, who must:

(1) Ensure that their committee activities comply with the Act, this part, their agency administrative procedures, and any other applicable laws and regulations;

(2) Approve or call all meetings of the advisory committee or subcommittee;

(3) Approve the agenda, except that this requirement does not apply to a Presidential advisory committee;

(4) Attend all advisory committee and subcommittee meetings for their duration;

(5) Fulfill the requirements under section 10(b) of the Act (codified at 5 U.S.C. 1009(b));

(6) Adjourn any meeting when he or she determines it to be in the public interest;

(7) Chair any meeting when so directed by the agency head;

(8) Maintain information on advisory committee activities and provide such information to the public, as applicable; and

(9) Ensure advisory committee members and subcommittee members, as applicable, receive the appropriate training (e.g., FACA overview, ethics training) for efficient operation and compliance with the Act and this part.

(b) The DFO should ensure a public facing website is created and maintained (that complies with the requirements

of section 508 of the Rehabilitation Act of 1973) for each advisory committee, and include information such as: the advisory committee charter; relevant laws, regulations, and guidance; advisory committee member rosters and subcommittee member rosters, as applicable; Federal Register notices; meeting information (such as agendas, meeting materials, and minutes); reports and recommendations; and any other information that would increase the transparency and public understanding of advisory committee functions and activities and assist in fulfilling the requirements under section 10(b) of the Act (codified at 5 U.S.C. 1009(b)).

28. Revise § 102-3.125 to read as follows:

§ 102-3.125 What is required to be included in an agency's administrative guidelines to implement an advisory committee?

An agency's administrative guidelines provide the details that advisory committee staff need to implement FACA requirements during the creation, operation, and termination of their advisory committees.

(a) *Advisory committee bylaws.* Advisory committee bylaws should be developed by the agency, with advisory committee input and buy-in. Agency guidelines should specify the content of bylaws and ensure that they provide clear operating procedures for advisory committee meetings,

other committee activities, and the relationship between committee members, the DFO, and agency staff.

(b) *Advisory committee costs.* Agency guidelines must:

(1) Provide instructions on how to identify, calculate, and fully document advisory committee costs; and

(2) Ensure agency committee cost records match the data reported to Congress and the public through the FACA database.

29. Revise § 102-3.130 to read as follows:

§ 102-3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members?

In developing guidelines to implement the Act, this part, and other applicable laws and regulations at the agency level, agency heads should address the following issues:

(a) *Appointment and terms of advisory committee members.* Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority. Agency heads are encouraged to set member term limits, where possible, so that agencies continually ensure

the committee is fairly balanced throughout the life of the advisory committee.

(b) *Compensation of advisory committee members.*

Agencies are not required to pay and are not prohibited from paying their advisory committee members, unless required to or prohibited from doing so by statute or Presidential authority. In determining the rate of compensation (per § 102-3.105(h)) the agency head may establish appropriate rates of pay (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h)) not to exceed the rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate expressly is allowed by another statute. The agency may pay advisory committee members on either an hourly or a daily rate basis. The agency may not provide additional compensation in any form, such as bonuses or premium pay.

(c) *Other compensation considerations.* In

establishing rates of pay for advisory committee members, the agency must comply with any applicable statutes, E.O.s, regulations, and administrative guidelines. In determining an appropriate rate of basic pay for advisory committee members, an agency must give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned, and the qualifications required for the work involved.

(d) *Federal employees assigned to an advisory committee.* Federal employees serving as either an advisory committee member or as a staff person remain covered during the assignment by the compensation system of their employing agency. Federal employees serving as an advisory committee member or as a staff person must first obtain both the approval of their direct supervisor and the respective committee's DFO prior to serving in either capacity.

(e) *Other appointment considerations.* Any advisory committee staff person who is not a current Federal employee must be appointed in accordance with applicable agency procedures, in consultation with the DFO, and, as appropriate, the members of the advisory committee involved.

(f) *Travel expenses.* Advisory committee members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed reimbursement for travel expenses, including per diem, per the rates established for employees by the Administrator of General Services at 5 U.S.C. 5702.

(g) *Services for advisory committee members with disabilities.* While performing advisory committee duties, an advisory committee member with disabilities may be provided services by a personal assistant as those that may be provided to employees per 5 U.S.C. 3102. Additional

accommodations should be discussed in order to maximize accessibility, including technology, per section 508 of the Rehabilitation Act.

Appendix A to Subpart C of Part 102-3 [Removed]

30. Remove appendix A to subpart C of part 102-3.

31. Revise § 102-3.140 to read as follows:

§ 102-3.140 What policies apply to advisory committee meetings?

(a) The agency head for a discretionary or non-discretionary advisory committee established or utilized by that agency, or the chairperson for an independent Presidential advisory committee, must ensure that:

(1) Each advisory committee meeting is held at a reasonable time and in a manner or place accessible to the public and includes consideration of affected communities, as appropriate, as well as facilities or technology that are readily accessible to and usable by persons with disabilities, consistent with the requirements set forth in section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794;

(2) The physical meeting room is sufficient to accommodate advisory committee members, advisory committee or agency staff, and a reasonable number of interested members of the public. If electronic forums are used, agencies should opt for technology features that are compliant with section 508 of the Rehabilitation Act,

accommodate advisory committee members, advisory committee or agency staff, and allow for maximum participation by members of the public, as appropriate;

(3) Any member of the public is permitted to file a written statement with the advisory committee, whether or not the statement is related to a specific meeting;

(4) Any member of the public may speak to or otherwise address the advisory committee if the agency's guidelines so permit; and

(5) Any advisory committee meeting conducted in whole or part through any electronic medium (such as a teleconference or through a virtual platform) meets the requirements of this subpart.

(b) The *Federal Register* notices, agendas, and supporting materials should be posted on the agency advisory committee website (if one exists) as soon as they are available or at the time they are provided to the advisory committee members.

32. Revise § 102-3.145 to read as follows:

§ 102-3.145 What policies apply to subcommittee meetings?

If a subcommittee provides advice or recommendations directly to a Federal officer or agency, or if its advice or recommendations will be adopted by the parent advisory committee without further deliberations by the parent advisory committee, then the subcommittee's meetings must

be conducted in accordance with the requirements of this subpart.

33. Revise § 102-3.150 to read as follows:

§ 102-3.150 How are advisory committee meetings announced to the public?

(a) A notice in the Federal Register must be published at least 15 calendar days prior to an advisory committee meeting, which includes:

(1) The name of the advisory committee (or subcommittee, if applicable);

(2) The time, date, physical place (and/or instructions to connect electronically), and purpose of the meeting;

(3) Whether meeting registration is required;

(4) A summary of the agenda, and/or topics to be discussed and instructions on how to access meeting materials;

(5) A statement whether all or part of the meeting is open to the public or closed; if the meeting is closed in whole or in part, state the reasons why, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c);

(6) Instructions for submitting written comments, and oral comments if permitted;

(7) Instructions on how to submit a request for physical meeting or electronic meeting accommodations

consistent with the requirements of E.O. 13166 and section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended; and

(8) The name and telephone number (or email) of the DFO or other responsible agency official, or agency electronic mailbox for the committee, to contact for additional information concerning the meeting.

(b) In exceptional circumstances, such as a national emergency or natural disaster, the agency or an independent Presidential advisory committee may give less than 15 calendar days notice, provided that the reasons for doing so are included in the advisory committee meeting notice published in the Federal Register.

(c) In addition to the Federal Register, and consistent with standard agency practice, agencies should announce meetings through additional notification methods, such as websites and social media, to reach committee stakeholders.

34. Amend § 102-3.155 by revising the introductory text and paragraphs (a), (b), and (c) to read as follows:
§ 102-3.155 How are advisory committee meetings closed to the public?

To close all or part of an advisory committee meeting, the DFO must:

(a) *Obtain prior approval.* Submit a request to the agency head, or in the case of an independent Presidential

advisory committee, the Secretariat, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), that justifies the closure. The request must provide the agency head or the Secretariat sufficient time (generally, 30 calendar days) to review the matter in order to make a determination before publication of the meeting notice required by 41 CFR 102-3.150;

(b) *Seek General Counsel review.* The Office of the General Counsel (or equivalent legal office) of the agency or, in the case of an independent Presidential advisory committee, GSA's Office of the General Counsel, should review all requests to close meetings;

(c) *Obtain agency determination.* If the agency head, or in the case of an independent Presidential advisory committee, GSA, finds that the request is consistent with the provisions of the Government in the Sunshine Act and FACA, the appropriate agency official must issue a determination that all or part of the meeting will be closed; and

* * * * *

35. Amend § 102-3.160 by revising paragraphs (a) and (b) to read as follows:

§ 102-3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?

* * * * *

(a) *Preparatory work.* Meetings of two or more advisory committee or subcommittee members convened solely to gather information, conduct research, or analyze relevant issues and facts in preparation for deliberation by advisory committee or subcommittee members in a public meeting of the advisory committee or subcommittee. These meetings to conduct preparatory work do not include deliberation among advisory committee or subcommittee members; and

(b) *Administrative work.* Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the advisory committee or subcommittee (such as meeting logistics) or to receive administrative information from a Federal officer or agency (such as a briefing on ethics or FACA procedural requirements).

36. Amend § 102-3.165 by revising paragraphs (b) (1) and (4) and (c) to read as follows:

§ 102-3.165 How are advisory committee meetings documented?

* * * * *

(b) * * *

(1) The time, date, and place (or electronic format) of the advisory committee meeting;

* * *

(4) Copies of each report or other materials received, issued, or approved by the advisory committee at the meeting.

(c) The DFO must ensure that minutes are certified for accuracy by the chairperson within 90 calendar days of the meeting to which they relate. Agencies should post the meeting minutes on the agency advisory committee website (if one exists) not later than 14 calendar days after the meeting minutes have been certified.

37. Revise § 102-3.170 to read as follows:

§ 102-3.170 How does an interested party obtain access to advisory committee records?

Timely access to advisory committee records is an important element of the public access requirements of the Act. Section 10(b) of the Act (codified at 5 U.S.C. 1009(b)) provides for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. Although advisory committee records may be withheld under the provisions of the Freedom of Information Act (FOIA) if there is a reasonable expectation that the records sought fall within the exemptions contained in 5 U.S.C. 552(b), agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee

records under the request and review process established by 5 U.S.C. 552(a)(3).

38. Revise § 102-3.175 to read as follows:

§ 102-3.175 What are the reporting and recordkeeping requirements for an advisory committee?

(a) *Presidential advisory committee follow-up report.*

Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report required by section 6(b) of the Act (codified at 5 U.S.C. 1005(b)) must be prepared and transmitted to the Congress detailing the disposition of the advisory committee's recommendations. These reports are prepared and transmitted to the Congress as directed by the President, either by the President's delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated in the charter of the Presidential advisory committee pursuant to § 102-3.75(f).

(b) Annual comprehensive review of Federal advisory committees. Per section 7(b) of the Act (codified at 5 U.S.C. 1006(b)), GSA is required to conduct an Annual Comprehensive Review (ACR) of the activities and responsibilities of each Federal advisory committee that was in existence during any part of a Federal fiscal year. The Secretariat initiates this review, provides guidance to the agencies and departments on how to conduct the review,

and closes out the ACR when all reviews have been completed. Federal agencies are responsible for reporting data on each advisory committee, such as its purpose, performance measures, subcommittees (if applicable), meeting, membership, and cost, into the GSA FACA database. CMOs, DFOs, and other responsible agency officials, such as GFOs, enter this data for the advisory committees they are responsible for in their agency. The FACA database provides transparency to the public on the activities of Federal advisory committees government-wide. The database is also used by Congress to perform oversight of the FACA program, and by the general public, the media, and others to stay abreast of important developments resulting from Federal advisory committee activities.

(c) *Annual report of closed or partially closed meetings.* In accordance with section 10(d) of the Act (codified at 5 U.S.C. 1009(d)), advisory committees holding closed or partially closed meetings must issue reports at least annually, setting forth a summary of activities and such related matters as would be informative to the public consistent with the policy of 5 U.S.C. 552(b).

(d) *Advisory committee reports.* Subject to 5 U.S.C. 552, copies of each report made by an advisory committee, including any report of closed or partially closed meetings as specified in paragraph (c) of this section and, where appropriate, background papers prepared by experts or

consultants, must be filed with the Library of Congress as required by section 13 of the Act (codified at 5 U.S.C. 1012) for public inspection and use.

(e) *Advisory committee records.* Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Upon termination of the advisory committee, the records must be processed in accordance with the Federal Records Act, 44 U.S.C. Chapters 21, 29-33, and regulations issued by the National Archives and Records Administration (see 36 CFR parts 1220, 1222, 1228, and 1234), or in accordance with the Presidential Records Act, 44 U.S.C. Chapter 22.

Appendix A to Subpart D of Part 102-3 [Removed]

39. Remove appendix A to subpart D of part 102-3.

40. Revise § 102-3.180 to read as follows:

§102-3.180 What does this subpart cover and how does it apply?

This subpart provides guidance to agencies on compliance with section 15 of the Act (codified at 5 U.S.C. 1014). Section 15 establishes requirements that apply only in connection with a funding or other written agreement involving an agency's use of advice or recommendations provided to the agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA), if such advice or recommendations were developed by use of a committee created by either academy. For purposes

of this subpart, NAS also includes the National Academy of Engineering, the National Academy of Medicine, and the National Research Council. Except with respect to NAS committees that were the subject of judicial actions filed before December 17, 1997, no part of the Act other than section 15 applies to any committee created by NAS or NAPA.

41. Revise § 102-3.185 to read as follows:

§ 102-3.185 What does this subpart require agencies to do?

(a) *Section 15 requirements.* An agency may not use any advice or recommendation provided to an agency by NAS or NAPA under an agreement between the agency and an academy, if such advice or recommendation was developed by use of a committee created by either academy, unless:

(1) The committee was not subject to any actual management or control by an agency or officer of the Federal Government; and

(2) In the case of NAS, the academy certifies that it has complied substantially with the requirements of section 15(b) of the Act (codified at 5 U.S.C. 1014(b)); or

(3) In the case of NAPA, the academy certifies that it has complied substantially with the requirements of sections 15(b) (1), (2), and (5) of the Act (codified at 5 U.S.C. 1014(b) (1), (2), and (5), respectively).

(b) *No agency management or control.* Agencies must not manage or control the specific procedures adopted by each academy to comply with the requirements of section 15

of the Act (codified at 5 U.S.C. 1014) that are applicable to that academy. In addition, however, any committee created and used by an academy in the development of any advice or recommendation to be provided by the academy to an agency must be subject to both actual management and control by that academy and not by the agency.

(c) *Funding agreements.* Agencies may enter into contracts, grants, and cooperative agreements with NAS or NAPA that are consistent with the requirements of this subpart to obtain advice or recommendations from such academy. These funding agreements require, and agencies may rely upon, a written certification by an authorized representative of the academy provided to the agency upon delivery to the agency of each report containing advice or recommendations required under the agreement that:

(1) The academy has adopted policies and procedures that comply with the applicable requirements of section 15 of the Act (codified at 5 U.S.C. 1014); and

(2) To the best of the authorized representative's knowledge and belief, these policies and procedures substantially have been complied with in performing the work required under the agreement.

Appendix A to Subpart E of Part 102-3 [Removed]

42. Remove appendix A to subpart E of part 102-3.

43. Add Subpart F, consisting of § 102-3.190, to read as follows:

Subpart F Severability

§ 102-3.190 What portions of this part are severable?

All provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is GSA's intention that the remaining provisions shall continue in effect.

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